HIGH COURT OF UTTARANCHAL, AT NAINITAL

Special Leave Application No. 04 of 2006

Shiv Narayan Gupta ….Appellant

Versus

1. State of Uttaranchal
2. Shri Satish Gupta
3. Shri Vishnu Gupta
4. Shri Sanjay Gupta
   All r/o Old Bazpur Bus Station
   Kaladhungi Road, Haldwani
   District Nainital …..Respondents

Mr. R.S. Sammal learned counsel for the appellant.

Mr. Sudhir Chaudhary learned A.G.A. assisted by Sri Rajeev Mohan.

Hon'ble J. C. S. Rawat, J.

1. This is a special leave application filed under section 378 Cr. P.C. against the judgment and order dated 13.1.2006 passed by Judicial Magistrate, Haldwani, District Nainital in criminal case No. 992/2004 Shiv Narayan Gupta Vs. Satish Gupta & others.

2. Brief facts of the case are that the complainant(appellant) filed a complaint before the Judicial Magistrate, Haldwani against the respondent No. 2 to 4. Thereafter, the case was registered and the evidence under sections 200 & 202 Cr.P.C. was recorded and the accused persons were summoned. The prosecution examined Shiv Narayan Gupta as PW1. It has been alleged in the complaints as well as by PW1 that the accused Sanjay Gupta had taken money as loan from PW1. When the complainant demanded the said money, Sanjay Gupta did not pay the money to him. When the complainant was near the bus station Haldwani on 01.10.2003 at about 5pm, the accused

persons met him. The complainant asked them to pay his money back. On this, the accused persons became annoyed and started abusing and assaulting him. The accused Sanjay Gupta caught hold the collar of the complainant and assaulted him. After hearing the hue and cry, other persons including Atul Gupta came forward to rescue the complainant. Thereafter, the accused persons while going from the place of incident threatended the complainant with dire consequences. The report of non-cognizable offence was lodged on the next day at about 8:30 a.m.

3. The prosecution has also adduced the evidence of Adul Gupta (PW2), who has narrated the entire incident. But, it is also admitted in the cross examination that he was known to the complainant prior to the incident and there is also a business transaction between them. He has further stated that he takes the goods from the shop of complainant on credit basis. He has further admitted that the complainant narrated the incident to him. He has further sated in his evidence that there were three persons, out of whom one –Sanjay Gupta caught hold the collar of the complainant and assaulted him. He has not stated that the other persons had also caused any type of assault.

4. I have gone through the impugned judgment in question. The learned Magistrate on the basis of his appreciation of the evidence has found that the prosecution could not establish the guilt beyond reasonable doubt against the respondent No.2 to 4. The magistrate has given cogent reasons that there was delay in lodging the FIR, though the police outpost

is near the place of incident. The report was not lodged on the same day. There is no plausible explanation for the delay. The report was lodged on the next day, but the main contents of the incident were not narrated in the FIR and the report of non-cognizable offence was lodged. It is also pertinent to mention here that Atul Gupta (PW2) has not corroborated the factum of participation of the other accused.

5. In view of the above, I find that the learned Magistrate has rightly acquitted the respondent No.2 to 4 by a reasoned judgment and there is no infirmity in the judgment passed by him. I am completely in agreement with the findings recorded by the court below. Therefore, the leave to appeal is hereby rejected.

(J.C.S. RAWAT, J.)

Dated 04.03.2006
LSR